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HEARING 3-26-01

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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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IN THE MATTER OF THE NOTICE OF
PROPOSED RULEMAKING FOR THE
ENVIRONMENTAL PORTFOLIO STANDARD

No.: RE-0000C-00-0377

**AEPCO'S APPLICATION FOR
REHEARING AND REQUEST
FOR STAY OF DECISION NO.
63364**

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Pursuant to A.R.S. § 40-253, Arizona Electric Power Cooperative, Inc. ("AEPCO") submits this Application for Rehearing and Request for Stay of Decision No. 63364 and its attachments (the "Decision"). In support of this Application, AEPCO incorporates herein by reference its Comments on the Proposed Rule dated October 5, 2000 and its Exceptions to the Proposed Opinion dated January 26, 2001.

Without waiver of the matters set forth in those filings but in addition thereto, Decision No. 63364 is unlawful, unreasonable, unconstitutional, arbitrary, capricious, in excess of the Commission's jurisdiction and an abuse of the Commission's discretion for the following reasons and upon the following grounds:

- The Decision is not supported by substantial evidence and is contrary to the evidence of record.
- The Decision violates the Commission's Rules including A.A.C. R14-2-701 et seq., the Arizona statutes and Constitution by requiring AEPCO to acquire resources which it does not need and which are not least cost resources.

- The Decision is unconstitutional and unlawful in that it exercises lawmaking, public policy and environmental planning powers which are reserved to the legislature.
- The Decision impermissibly delegates to others and the Director, Utilities Division powers which must be exercised by the Commission, assuming arguendo it has or may exercise such powers. Further, even assuming the Commission lawfully has such powers and may delegate them, the delegation impermissibly contains no controlling standards.
- The Solar Electric Fund provisions of the Decision violate A.R.S. §§ 40-429 and 35-141 et seq. concerning the lawful receipt, use and disposition of public monies and proceeds of penalties.
- The Solar Electric Fund provisions of the Decision violate Arizona's Procurement Act.
- The solar "deficiency" and penalty provisions of the Decision exceed and violate the Commission's statutory penalty powers as set forth in A.R.S. § 40-421, et seq.
- The Environmental Portfolio, solar penalty and Solar Electric Fund provisions of the Decision are unconstitutional in that they are an exercise of the powers of taxation and appropriation which are reserved to the Legislature and further violate Article IX, § 7 of the Arizona Constitution by subsidizing a particular industry.
- The Commission has no power to void or abrogate private contracts as the Decision purports to authorize for consistently deficient provision of solar energy.
- The approval of the Environmental Portfolio Standard exceeds the Commission's statutory and constitutional jurisdiction and impermissibly conflicts with and exceeds the powers granted to the Commission in H.B. 2663 and A.R.S. § 40-202.
- The Decision is unlawful and exceeds the Commission's jurisdiction by impermissibly interfering with the internal management, operations and management prerogatives of AEPCO.
- The Decision is an unconstitutional taking of AEPCO's property in that it forces AEPCO to incur costs and make investments without affording it adequate compensation for such costs and investments.
- The Decision violates Article 15 of the Arizona Constitution in that it deprives AEPCO of a fair rate of return on the fair value of its property required by the Commission to be devoted to the public use.

- The Decision impermissibly authorizes rates in violation of the requirements of Article 15 and the case law decided thereunder.
- The Decision violates A.R.S. § 41-1044 and the Arizona Court of Appeals decision in U S WEST Communications, Inc. v. Arizona Corporation Comm'n, 197 Ariz. 16, 3 P.3d 936 (App. 1999) for failure to seek Attorney General certification.
- The Decision violates the Administrative Procedure Act in that the proposed rule and adopted rule are substantially different and required noticing procedures were not followed.
- The Decision violates the decision of the Arizona Court of Appeals in U S WEST Communications, Inc. v. Arizona Corporation Comm'n, ---Ariz.---, 8 P.3d 396 (App. 2000) and the decision of the Maricopa County Superior Court in Cause No. 97-03748 regarding the Commission's duties and obligations under Article 15 of the Arizona Constitution and A.R.S. § 41-1044.

WHEREFORE, having fully stated its Application, AEPCO requests that the Commission enter its order granting this Application for Rehearing, staying Decision No. 63364 and repealing R14-2-1618.

RESPECTFULLY submitted this 26 day of February, 2001

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